



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,067	10/10/2001	William D. Swart	007412.00793	5257
71867	7590	04/15/2010	EXAMINER	
BANNER & WITCOFF , LTD			SALTARELLI, DOMINIC D	
ATTORNEYS FOR CLIENT NUMBER 007412			ART UNIT	PAPER NUMBER
1100 13th STREET, N.W.			2421	
SUITE 1200				
WASHINGTON, DC 20005-4051				
MAIL DATE		DELIVERY MODE		
04/15/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM D. SWART, JOHN S. MCCOSKEY,
and MICHAEL L. ASMUSSEN

Appeal 2009-011542
Application 09/973,067
Technology Center 2400

Mailed: April 15, 2010

Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on May 27, 2009. A Docketing Notice was mailed and Appeal No 2009-011542 was assigned on June 11, 2009. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Appeal 2009-011542
Application 09/973,067

Claims 10 and 12-22 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2nd paragraph. . *See Ex Parte Rodriguez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: http://www.uspto.gov/web/offices/pac/dapp/opla/preognitice/section_112_6th_09_02_2008.pdf . Thus, there is a question as to whether claims 10 and 12-22, and the claims which depend upon these claims, meet the requirements of being definite under 35 U.S.C. § 112, 2nd paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 10 and 12-22, and the claims which depend upon these claims, meet the requirements of 35 U.S.C. § 112, 2nd paragraph.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/eld

BANNER & WITCOFF, LTD
ATTORNEYS FOR CLIENT NUMBER 007412
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051